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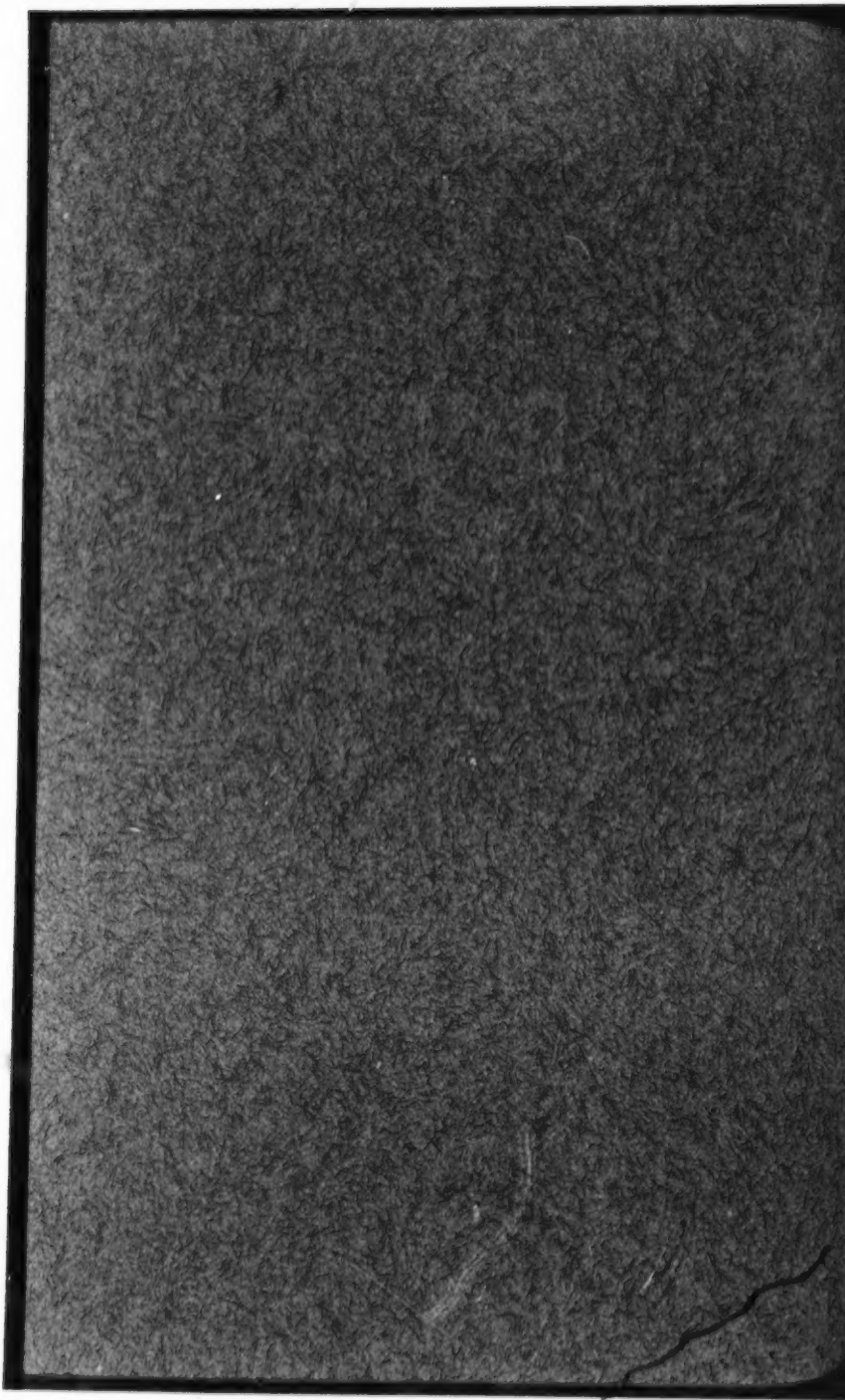

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 1298

ESTATE OF WILLIAM DOUGLAS CHEW, JR., CARRIE COLE CHEW, MOTHER AND SOLE HEIR, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 32–38) is reported at 148 F. 2d 76. The opinion of the Tax Court (R. 18–23) is reported at 3 T. C. 940.

JURISDICTION

The judgment of the Circuit Court of Appeals (R. 38) was entered on March 1, 1945. The petition for a writ of certiorari was filed on May 21, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Where an insured person takes his own life within two years after the issuance to him of insurance policies containing a provision limiting the liability of the insurer, in case of self-destruction, to the repayment of the amount of premiums paid, without interest, are the amounts paid under such provision to beneficiaries other than the decedent's estate amounts receivable "as insurance" within the meaning of Section 811 (g) of the Internal Revenue Code, permitting the exclusion from the gross estate of the decedent of such amounts not in excess of $40,000?

2. If the amounts here involved do not constitute amounts receivable "as insurance" within the meaning of Section 811 (g), are they includible in the decedent's gross estate under Section 811 (c) of the Internal Revenue Code?

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Internal Revenue Code and the Treasury Regulations involved are printed in the Appendix, *infra*, pp. 10–14.

STATEMENT

This proceeding involves a deficiency in federal estate tax asserted against the estate of William Douglas Chew, Jr., deceased, who died on November 28, 1940, under circumstances which indicated self-destruction (R. 19–20).

The facts of this case are not in dispute. At the time of his death the decedent was possessed

of a large estate, including three insurance policies which give rise to the present controversy. All three of these policies were issued by the New York Life Insurance Company, a mutual company, within four months prior to the death of the decedent, and in each the mother of the decedent was named as beneficiary. Each policy also provided that in the event the designated beneficiary should predecease the insured, the interest of such beneficiary should vest in the insured. (R. 20.)

Two of the three policies in question were "single premium" policies, and were issued on August 14, 1940. One policy was for the amount of $21,200, on which there was a single premium paid of $15,072.35, and another was for the amount of $10,000, on which there was a single premium paid of $7,109.60. Each of these was described as "15 Year Endowment—Single Premium—Endowment payable in 15 years or at prior death". The third policy was issued on September 30, 1940, for the amount of $10,000, and was a "Twenty-Payment Life" policy which provided for the payment of an annual premium of $357.90. (R. 20.) Each policy contained the following clause (R. 20–21):

> In the event of self-destruction during the first two insurance years, whether the Insured be sane or insane, the insurance under this Policy shall be a sum equal to the premium hereon which has been paid

to and received by the Company and no more.

At the time of the decedent's death the foregoing policies were in full force and effect. The sums paid as premiums thereon up to that time aggregated $22,539.85, and because of the circumstances under which the decedent died (described in the coroner's records of Caddo Parish, Louisiana, as "suicide by firing pistol into heart"), the New York Life Insurance Company admitted liability only for an amount equal to the amount of premiums paid. According to the records of the insurance company, the proceeds of the three policies, $22,539.85, were left on deposit with the company, at interest, in the name of the beneficiary, Carrie Cole Chew, in accordance with an option contained in the insurance contracts. The insurance company reported the payments called for under the policies as "premiums refunded", upon Treasury Form 712 filed with the decedent's estate tax return. (R. 20–21.)

In the estate tax return the amount of $22,539.85, representing the proceeds of the above three policies, along with the proceeds, amounting to $10,100.18, of two other policies held by the decedent and payable to his mother as beneficiary, was included in gross estate as insurance payable to a beneficiary other than the estate of the deceased, and the specific exemption of $40,000 permitted by Section 811 (g) of the Internal Revenue Code was

claimed against the above amounts aggregating $32,640.03 (R. 21).

In determining the estate tax deficiency here involved, the Commissioner, among other adjustments to gross and net estate reported (R. 9), denied the exemption of the above $22,539.85 under Section 811 (g) as "insurance" paid to beneficiaries other than the decedent's estate, and held that it was taxable as part of the decedent's gross estate "without the application against same of any portion of the specific exemption of $40,000.00 provided for in section 811 (g), supra" (R. 11–12).

The Tax Court held that because of the self-destruction provision of the policies in question, and the circumstances of the decedent's death, the sums paid under those policies were not "receivable * * * as insurance" by beneficiaries other than the decedent's estate, within the meaning of Section 811 (g), and that the total amount was includible in the gross estate under Section 811 (c) of the Internal Revenue Code (R. 18–23). The Circuit Court of Appeals affirmed the decision of the Tax Court (R. 32–38).

ARGUMENT

The decision of the court below is not in conflict with any other decision and we believe that there is no other ground justifying the granting of a writ of certiorari.

The petitioner raises two questions (Pet. 2): (1) Whether the amounts aggregating $22,539.85 payable under the three insurance policies under the circumstances shown by the record constitute amounts "receivable * * * as insurance" by beneficiaries other than the estate of the decedent within the meaning of Section 811 (g) of the Internal Revenue Code (Appendix, *infra*, p. 11); and (2) if such amounts do not constitute "insurance" within the meaning of the statute, whether the transactions involved constitute transfers in contemplation of death or intended to take effect in possession or enjoyment at or after death, within the meaning of Section 811 (c) of the Internal Revenue Code (Appendix, *infra*, pp. 10–11). Without citing any decision to the contrary, the petitioner urges that the Tax Court and the Circuit Court of Appeals were wrong in their decision of each question (Pet. 8–12).

1. The courts below held that the amounts here involved did not constitute amounts payable "as insurance" within the meaning of Section 811 (g). We believe that they correctly concluded that the definition of "insurance" in *Helvering* v. *Le-Gierse*, 312 U. S. 531, for purposes of an identical statutory provision, is controlling here. There this Court, defining insurance as involving risk-shifting and risk-distribution, said that the fair import of the statute is that the amounts must be received as a result of a transaction which involved an

actual insurance risk "at the time the transaction was executed" (312 U. S. at p. 539). From the finding (R. 20) that the insurance company admitted liability only with respect to the clause restricting its liability in the case of the insured's self-destruction to amounts equal to the premiums paid, it is clear that the amounts involved were not paid on an insurance risk but were merely the refund of premiums. Whether or not the insurance company assumed such risks under other clauses of the policies is unimportant. What is material is that any amounts payable in the event of death by self-destruction within the first two insurance years were not payable on account of any "insurance risk" assumed by the company.

The state court decisions cited by the petitioner (Pet. 9–10) have no bearing upon the question. The question here involves the construction of the term "insurance" as used in this particular statute, and the application of that construction to the facts of this case. Cf. *Estate of Henry W. Putnam* v. *Commissioner,* decided by this Court on March 26, 1945, not yet reported, and cases cited.

2. Petitioner's contentions with respect to the second question are untenable. Although the burden was on the petitioner, its petition before the Tax Court (R. 3–6) did not question whether the payments made under the policies constituted transfers in contemplation of death

or intended to take effect at death, nor was any proof to that effect offered. The Tax Court stated (R. 22) that there was no claim that the amounts involved are not a part of the gross estate if the exclusion provided for in Section 811 (g) should be inapplicable. At any rate, the courts below properly held that the amounts are includible in the gross estate if the exclusion does not apply. In addition to transfers made in contemplation of death, or to take effect at death, Section 811 (c) also applies where, as here, the decedent retained the right "either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property". Innumerable decisions holding transfers includible in the gross estate under Section 811 (c) or corresponding provisions of earlier Revenue Acts, support the conclusion of the courts below. See, *e. g., Helvering* v. *LeGierse,* 312 U. S. 531; *Estate of Keller* v. *Commissioner,* 312 U. S. 543; *Helvering* v. *Hallock,* 309 U. S. 106; *Chase Nat. Bank* v. *United States,* 278 U. S. 327; *Kernochan* v. *United States,* 29 F. Supp. 860 (C. Cls.), certiorari denied, 309 U. S. 675; *Helvering* v. *Tyler,* 111 F. 2d 422 (C. C. A. 8th), affirmed, 312 U. S. 657; *Old Colony Trust Co.* v. *Commissioner,* 102 F. 2d 380 (C. C. A. 1st).

3. This case does not present a question of sufficient general importance to justify review by this Court. Section 811 (g) of the Internal Revenue Code was amended by Section 404 of the Revenue Act of 1942, c. 619, 56 Stat. 798, 944, to

eliminate the exclusion previously granted for insurance paid to beneficiaries other than the decedent's estate. The amendment is applicable to the estates of decedents dying after the date (October 21, 1942) of enactment of the Act. Section 401 of the 1942 Act, *supra*.

CONCLUSION

The decision below is correct and there is no conflict of decisions. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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JUNE 1945.